

## JS 44 (Rev. 12/07) (CAND Rev 1/10)

## **I. (a) - PLAINTIFFS**

## DEFENDANTS

County of Residence of First Listed Defendant      United States  
(IN U.S. PLAINTIFF CASES ONLY)

Attorneys (If Known)

**MEJ** E-filing

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff  
(For Diversity Cases Only) and One Box for Defendant)

- |   | PTF                                   | DEF                                   |  | PTF                                   | DEF                                   |
|---|---------------------------------------|---------------------------------------|--|---------------------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input checked="" type="checkbox"/> 1 | Incorporated in Principal Place of Business In This State            | <input type="checkbox"/> 4            | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated <i>and</i> Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation   | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment	
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal	<input type="checkbox"/> 410 Antitrust	
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product	Med. Malpractice	<input type="checkbox"/> 625 Drug Related Seizure	28 USC 157	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 140 Negotiable Instrument	Liability	<input type="checkbox"/> 365 Personal Injury —	of Property 21 USC 881		<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 150 Recovery of Overpayment	<input type="checkbox"/> 320 Assault, Libel &	Product Liability	<input type="checkbox"/> 630 Liquor Laws	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> & Enforcement of Judgment	Slander	<input type="checkbox"/> 368 Asbestos Personal	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 470 Racketeer Influenced and	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 330 Federal Employers'	Injury Product	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 830 Patent	Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted	Liability	Liability	<input type="checkbox"/> 660 Occupational	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit	
Student Loans	<input type="checkbox"/> 340 Marine	<b>PERSONAL PROPERTY</b>	Safety/Health		<input type="checkbox"/> 490 Cable/Sat TV	
(Excl. Veterans)	<input type="checkbox"/> 345 Marine Product	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 690 Other	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 153 Recovery of Overpayment	Liability	<input type="checkbox"/> 371 Truth in Lending	<b>LABOR</b>	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 850 Securities/Commodities/	
of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal	<input type="checkbox"/> 710 Fair Labor Standards	<input type="checkbox"/> 862 Black Lung (923)	Exchange	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle	Property Damage	Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge	
<input type="checkbox"/> 190 Other Contract	Product Liability	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	12 USC 3410	
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 360 Other Personal Injury	Product Liability	<input type="checkbox"/> 730 Labor/Mgmt. Reporting	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions	
<input type="checkbox"/> 196 Franchise			& Disclosure Act		<input type="checkbox"/> 891 Agricultural Acts	
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 740 Railway Labor Act		<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate	<input type="checkbox"/> 790 Other Labor Litigation	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Sentence	<input type="checkbox"/> 791 Empl. Ret. Inc.	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/	<b>Habeas Corpus:</b>	Security Act	or Defendant)	<input type="checkbox"/> 895 Freedom of Information	
<input type="checkbox"/> 240 Torts to Land	Accommodations	<input type="checkbox"/> 530 General	<b>IMMIGRATION</b>	<input type="checkbox"/> 871 IRS—Third Party	Act	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 462 Naturalization Application	26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 445 Amer. w/Disabilities -	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 463 Habeas Corpus —		Determination	
	Employment	<input type="checkbox"/> 550 Civil Rights	Alien Detainee		Under Equal Access	
	<input type="checkbox"/> 446 Amer. w/Disabilities -	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 465 Other Immigration		to Justice	
	Other		Actions		<input type="checkbox"/> 950 Constitutionality of	
	<input type="checkbox"/> 440 Other Civil Rights				State Statutes	

☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 another district (specify)    ☐ 6 Multidistrict Litigation    ☐ 7 Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

CA Bus.&Prof Code 17200, et seq; CA Civil Code 1572, 1709, 1710, 1770(a)(7), 1770(a)(9)

**Brief description of cause:**

Defendants violated the privacy rights of the Plaintiff and each class member

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**CHECK YES only if demanded in complaint:**  
**JURY DEMAND:**    ☒ Yes ☐ No

PLEASE REFER TO CIVIL L.R. 312 CONCERNING REQUIREMENT TO FILE  
"NOTICE OF RELATED CASE".

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA

DATE \_\_\_\_\_

06-10-11

SIGNATURE OF ATTORNEY OF RECORD

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25 **ATTORNEYS FOR PLAINTIFFS**  
 26 **(pro hac vice application pending)**

27 **IN THE UNITED STATES DISTRICT COURT**  
 28 **FOR THE NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

1 TONY ROLAND MARTINEZ, on behalf of  
 2 themselves and all others similarly situated,  
 3 Plaintiffs,

4 v.

5 SONY COMP. ENT. AM.LLC, SONY NETWORK  
 6 ENT. INTL. LLC, INC.,  
 7 Defendants.

CV

11 2900

MEJ

Cause No.

Judge:

**COMPLAINT – CLASS  
 ACTION**

**JURY TRIAL DEMAND**

29 Plaintiff TONY ROLAND MARTINEZ (“MARTINEZ” or “Plaintiff,”) brings this action  
 30 against SONY COMPUTER ENTERTAINMENT AMERICA LLC (“SCEA”) and SONY

1 NETWORK ENTERTAINMENT INTERNATIONAL LLC ("SNEI") (collectively, "SONY" or  
2 "Defendant"), on behalf of himself, all others similarly situated, and alleges as follows:

3  
4 **I.**

5 **OVERVIEW**

6 1. This action is brought on behalf of plaintiff individually, as and as class  
7 representatives for all others similarly situated nationwide against SONY to redress Defendant's  
8 breach of warranty, negligent data security, violations of consumers' rights of privacy, failure to  
9 protect those rights, and failure and on-going refusal to timely inform consumers of unauthorized  
10 third party access to their credit card account and other nonpublic and private financial information.

11 2. This action arises from SONY'S lack of adequate computer data security measures to  
12 protect consumer personal data and financial data. Specifically, this data includes, but is not limited  
13 to credit card data. Sony should have reasonably foreseen the ultimate exploitation of such  
14 inadequate security at Defendant's SONY by computer "hackers." The inadequate security and  
15 eventual breach compromised the privacy and private information of approximately seventy-seven  
16 (77) Million consumer credit card account holders.

17 3. Plaintiff is informed and believes that this breach of security was caused by SONY's  
18 negligence in data security. SONY failed, among other things, to maintain a proper firewall and  
19 computer security system, failed to properly encrypt data, maintained and retained unauthorized  
20 data, violated Payment Card Industry Data Standard(s) and rules and regulations it was bound to  
21 obey for the benefits of consumers concerning the storage of consumers' private identifying  
22 transaction and credit card information, and violated California laws requiring the implementation  
23 and maintenance of security for customer information, Civil Code § 1798.80 *et seq.*

24 4. Subsequent to the compromise of private consumer information and financial data,  
25 Defendant unnecessarily delayed and / or failed to inform the appropriate entities in a timely fashion.  
26  
27  
28



1 Further, consumers whose data was compromised were not informed of their vulnerabilities and  
2 exposure to credit card (or other) fraud allowing consumers to make an informed decision as to  
3 whether to change credit cards numbers, close the exposed accounts, check their credit reports, or  
4 take other preventive actions. Defendant failed to provide regular credit reports and credit  
5 monitoring at their own expense to those whose private data was exposed and left vulnerable. This  
6 caused, and continues to cause, millions of consumers fear, apprehension, and damages including  
7 extra time, effort, and costs for credit monitoring, and extra time, effort, and costs associated with  
8 replacing cards and account numbers, and burden, and is harming both consumers' and merchants'  
9 ability to protect themselves from such fraud. This lawsuit seeks to remedy the injury incurred by  
10 Plaintiff and the class as a result of Defendants' actions..

12           5.       Plaintiff and all other users of PlayStation consoles and PlayStation Network ("PSN")  
13 service nationwide, were further damaged as a result of the disruption of service and loss of data  
14 security. This suit also seeks to redress SONY's failure to adequately provide service to PlayStation  
15 consoles and PlayStation Network ("PSN").

17           6.       As reported in numerous published sources, as a result of the breach of security and  
18 loss of personal data belonging to Plaintiff and Class members, users experienced an inability to  
19 access PSN services, including inability to use the online gaming network.

21           7.       Defendant did not inform Plaintiff or all other users of PlayStation consoles and  
22 PlayStation Network ("PSN") service nationwide regarding the reason for suspension of service or  
23 the fact of the security breach for a week after the security breach.

24           8.       As a result of the combination of wrongful acts and omissions of the Defendant in  
25 this case, consumers and merchants have been harmed and are in significant danger of further harm.

26           9.       Plaintiff seeks damages to compensate him and the Class for their loss (both  
27 temporary and permanent) of use of their PlayStation consoles and the PlayStation Network and  
28

1 Qriocity services (collectively referred to herein as "PSN" service), and their time and effort spent  
2 attempting to protect their privacy, identities and financial information.

3 10. Furthermore, Plaintiff is informed and believes that Defendant has been aware for a  
4 substantial period of time that PSN was prone to catastrophic loss of data from security breach.  
5 However, Defendant failed to warn its customers of the problem or tried to prevent them from  
6 suffering system suspension because of security breaches and data losses. Defendant failed to  
7 effectively remedy the problems and defects inherent in the PSN.  
8

9 11. SONY failed to inform consumers who purchased defective PlayStation consoles and  
10 PSN service. Specifically, SONY did not warn customers about the risks inherent in purchasing  
11 those consoles and relying upon SONY's data security.  
12

13 12. Plaintiff asserts claims for breach of the Song-Beverly Consumer Warranty Act  
14 ("Song-Beverly Act"), for breach of express warranty pursuant to Commercial Code § 2313 and  
15 pursuant to the Consumer Legal Remedies Act ("CLRA"), Civil Code § 1750, for Negligence,  
16 claims under Business and Professions Code §§ 17200 and 17500, *et seq.*

17 13. Plaintiff seeks actual and/or compensatory damages; restitution; equitable relief, costs  
18 and expenses of litigation, including attorneys' fees; and all additional and further relief that may be  
19 available.  
20

## 21 II.

### 22 PARTIES

23 14. Plaintiff, TONY ROLAND MARTINEZ, is a citizen of the State of Texas and the United  
24 States of America, who maintains a residence in San Antonio, Texas, first purchased a SONY  
25 PlayStation3 console, the PSN service and multiplayer games for use on the PSN service in or  
26 around November of 2010. On or about April 17-18, 2011, Plaintiff noticed he had lost access to  
27 PSN. Plaintiff did not know of the security breach and loss of his personal and credit card data  
28

1 stored on SONY's servers.

2 15. Defendant, SONY COMPUTER ENTERTAINMENT AMERICA LLC (formerly  
3 SONY COMPUTER ENTERTAINMENT AMERICA INC.) ("SCEA") is a Delaware limited  
4 liability company with its executive offices and principal place of business and corporate  
5 headquarters in Foster City, California.  
6

7 16. Defendant, SONY NETWORK ENTERTAINMENT INTERNATIONAL LLC  
8 ("SNEI") is a Delaware limited company with its executive office and principal place of business  
9 and corporate headquarters in Los Angeles, California.

### 10 III.

#### 11 JURISDICTION AND VENUE

12 17. This case is subject to original jurisdiction in this court pursuant to the Class Action  
13 Fairness Act of 2005. Pub. L. No. 109-2, 119 Stat. 4 (codified in scattered section of 28  
14 U.S.C.)("CAFA") because at least one member of the proposed class has a different citizenship from  
15 a defendant and the total matter in controversy exceeds \$5,000,000. Thus, this court has subject  
16 matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. Venue is proper in the Northern  
17 District of California pursuant to 28 U.S.C. § 1391 because this District is the district in which  
18 defendant SCEA is located and a District in which a substantial part of the events or omissions  
19 giving rise to the claim occurred.  
20

21 18. **INTRADISTRICT ASSIGNMENT** – Pursuant to Civil Local Rule 3-2(e), this case  
22 shall be assigned to the San Francisco Division as it arises from San Mateo County.  
23

#### 24 IV. CLASS ACTION ALLEGATIONS

25 19. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and Fed. R. Civ. P. 23  
26 (b)(3) on behalf of himself and the following Nationwide Class:

27 All persons or entities that purchased a Sony PlayStation console and  
28 subscribed to the PlayStation Network or Qriocity service and suffered  
loss of service and breach of security on or about April 17-19, 2011.

1 Excluded from this Class are SONY COMPUTER  
2 ENTERTAINMENT AMERICA LLC and SONY NETWORK  
3 ENTERTAINMENT INTERNATIONAL LLC, and their affiliates,  
employees or agents, or persons or entities that distributes or sell the  
Sony PlayStation and the PlayStation Network service.

4 20. The members of the Class are so numerous that joinder of all members would be  
5 impracticable. Plaintiff estimates that there are approximately seventy-seven (77) million purchasers  
6 of the Sony PlayStation and the PSN service who have suffered loss of service who have suffered  
7 loss of service and breach of security.

8 21. There are questions of law and fact to be members of the Class that predominate over  
9 any questions affecting only individual members, including:  
10

- 11 • whether Defendant's conduct constitutes negligence;
- 12 • whether Defendant's conduct violates California's Consumer Legal Remedies Act;
- 13 • whether Defendant's conduct violates Cal. Bus. & Prof. Code § 17200;
- 14 • whether Defendant's conduct violates Cal. Bus. & Prof. Code § 17500;
- 15 • whether Defendants breached the warranties alleged;
- 16 • whether Defendant misrepresented the PSN service capabilities to protect data;
- 17 • whether Defendant concealed and did not disclose the defects in the PSN service  
18 capabilities to protect data;
- 19 • whether Defendant unreasonably delayed in remedying the suspension of service and  
20 loss of data.

21 22. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff has  
22 no interests antagonistic to those of the Class and are subject to no unique defenses.

23 23. Plaintiff will fairly and adequately protect the interests of the Class and have retained  
24 attorneys experienced in class and complex litigation.

25 24. A class action is superior to other available methods for the fair and efficient  
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27  
28



1 adjudication of this controversy for the following reasons:

- 2 • It is economically impractical for each member of the Class to prosecute individual
- 3 actions.
- 4 • The class is readily definable.
- 5 • Prosecution as a class action will eliminate the possibility of repetitious litigation.
- 6 • A class action will enable claims to be handled in an orderly and expeditious manner.
- 7 • A class action will save time and expense and will ensure uniformity of decisions.
- 8 • Plaintiffs do not anticipate any difficulty in the management of this litigation as a
- 9 class action.

10 23. San Mateo county, California, as the site of SCEA's headquarters and the place where  
11 all significant decision-making occurred with respect of the PSN service, is the center or gravity for  
12 this action such that it is appropriate and consistent with existing law to certify the class of  
13 consumers proposed in the Complaint to be litigated to this District.

14 24. Certification of such a class under the laws of California is appropriate because:

- 15 • SCEA is a limited liability company conducting substantial business in and from
- 16 California.
- 17 • SNEI is a limited liability company conducting substantial business in and from
- 18 California.
- 19 • SCEA's and SNEI's principal and executive offices, as well as its corporate
- 20 headquarters, are located in California.
- 21 • SCEA's and SNEI's marketing, promotional activities and literature are coordinated
- 22 at, emanate from and/or are developed at their California headquarters.
- 23 • The UCL and § 17500 expressly apply to claims asserted by out-of-state Class
- 24 members regarding false representation emanating from the State of California.
- 25 • A significant number of Class members reside in the State of California.
- 26 • SONY expressly attempts to impose California law upon purchasers of the
- 27 PlayStation and PSN service.

28 VI.

SUBSTANTIVE ALLEGATIONS



1        26. Defendant represents and advertises the PlayStation consoles and PSN and Qriocity  
2 services as being an exceptionally powerful and secure gaming system and online gaming network,  
3 offering gaming, music and movies to people with PlayStation consoles.

4        27. The PlayStation consoles and PSN service not only allows users to play games online  
5 but also allows users to buy content and services. Such services include new or required levels for  
6 games, movies, television shows and/or original programs. Users are also allowed to trade points  
7 earned on games for products and services related to online gaming  
8

9        28. On information and belief, PSN's security was breached between April 17-19, 2011,  
10 exposing names, addresses, email addresses, birthdates, usernames, passwords, logins, security  
11 questions and possibly credit card data belongings to approximately seventy-seven (77) million user  
12 accounts.  
13

14        29. On information and belief, Defendant reacted to the security breach by shutting down  
15 the PSN. However, Defendant failed to advise Plaintiff or members of the Class why the PSN was  
16 shut down until Tuesday, April 26, 2011.

17        30. Defendant's shutdown of PSN prevented Plaintiff and the Class from buying and  
18 downloading games or making use of their PlayStation consoles for multiplayer gaming over the  
19 Internet. Defendant promised customers the PSN would be available and running again a week from  
20 May 1<sup>st</sup> but the PSN was not back until thirteen (13) days later on May 14<sup>th</sup>, 2011.  
21

22        31. On information and belief, children with accounts established buy their parents also  
23 may have had their data exposed.

24        32. As well as apologizing publicly for the lapse of care SONY also admitted the gravity  
25 of the situation and warned its customers that their personal data had been stolen, urging users to  
26 change passwords and check their credit card accounts for fraudulent behavior. SONY also claimed  
27 it would offer its US customers free time on the system and identity theft monitoring services as  
28

1 compensation.

2 33. SONY misrepresented the quality and reliability of the PSN service and its ability to  
3 keep data secure, including, but not limited to its representation in its Privacy Policy, which states in  
4 pertinent part:

5 **Accuracy & Security** We take reasonable measures to protect the  
6 confidentiality, security, and integrity of the personal information  
7 collected from our website visitors. Personal information is stored in  
8 secure operating environments that are not available to the public and  
9 that are only accessible to authorized employees. We also have  
security measures in place to protect the loss, misuse, and alteration of  
the information under our control...

10 35. On information and belief, SONY failed to maintain proper and adequate backups  
11 and/or redundant systems, failed to encrypt data and establish adequate firewalls to handle a server  
12 intrusion contingency, failed to provide prompt and adequate warnings of security breaches, and  
13 unreasonably delayed in bringing the PSN service back on line.

14 36. The harm caused by Defendant's false and misleading statements and omissions  
15 grossly outweigh any benefit that could be attributed to them.

16 37. On information and belief, Defendant is and has been aware of the scope of the  
17 problems with the PSN service but failed to take substantial corrective action. On information and  
18 belief, Defendant has taken only minimal action in response to consumer complaints.

19 38. Under a number of California consumer statutes and equitable provisions the  
20 consumer product protections of California law are unwaivable by the use of any shrink-wrap  
21 warranty limitations. For example, the Song-Beverly Acts states expressly:

22 Any waiver by the buyer of consumer goods of the provisions of this  
23 chapter, except as expressly provided in this chapter, shall be deemed  
24 contrary to public policy and shall be unenforceable and void

25 39. On information and belief SONY was, at all times relevant herein, in violation of the  
26 Payment Card Industry Data Security Standard by, including (without limitation), the following  
27  
28

1 conduct: improperly storing and retaining credit card transaction and consumer data in an  
2 unencrypted, unsecured, and unauthorized manner, failing to all reasonable steps to destroy, or  
3 arrange for the destruction of a customer's records within its custody or control containing personal  
4 information which is no longer authorized to be retained by the business by failing to shred, erase, or  
5 otherwise modify the personal in those records to make it unreadable or undecipherable through any  
6 means; failing to properly install, implement, and maintain a firewall to protect consumer data;  
7 failing to properly analyze and restrict IP addresses to and from its computer systems; or properly  
8 perform dynamic packet filtering; failing to properly restrict access to its computers; failing to  
9 properly protect stored data; failing to encrypt cardholder data and other sensitive information;  
10 failing to properly implement and update adequate anti-virus and anti-spyware software that would  
11 properly prevent unauthorized data transmissions caused by viruses, executable or scripts, from its  
12 servers or computer systems; failing to track and monitor all access to network resources and  
13 cardholder data; failing to regularly test security systems and processes or maintains an adequate  
14 policy that addresses information security, or to run vulnerability scans.

17 40. On information and belief, due to security vulnerabilities at SONY, computer  
18 "hackers" (authorized third parties) gained access to SONY's computer data and compromised the  
19 security of approximately seventy-seven (77) Million credit card accounts and related security,  
20 identity and transaction data, including (without limitation) such data of California residents.

22 41. On information and belief, one or more unauthorized persons who accessed SONY's  
23 computer data gained unauthorized access to the personal financial, credit and debit account,  
24 identifying, and other nonpublic information of plaintiffs herein.

25 42. The compromised and stolen data was private and sensitive in nature and, on  
26 information and belief, was left unencrypted by SONY on its servers and included (without  
27 limitation), on information and belief, consumers' names, credit card account numbers, access codes  
28

1 and other personal identifying information, including, but not limited to addresses, birthdates,  
2 usernames, passwords, logins and security questions.

3 **VII.**

4 **CAUSES OF ACTION**

5 **A. Count I -- Violation of Bus. & Prof. Code §17200**

6 43. Plaintiff realleges and incorporates the above allegations by reference as if set forth  
7 fully herein.

8 44. Plaintiff and the class have suffered injury in fact and lost money or property as a  
9 result of such unfair competition.

10 45. SONY has engaged in unfair, unlawful and fraudulent business practices as set forth  
11 above.

12 46. By engaging in the above-described acts and practices, SONY has committed one or  
13 more acts of unfair competition within the meaning of Bus. & Prof. Code §17200, *et seq.*

14 48. Defendant's acts and practices have and/or are likely to deceive members of the  
15 consuming public.

16 49. Defendant's acts and practices are unlawful because they violate Civ. Code §§1572,  
17 1709, 1710, 1770(a)(5), 1770(a)(7), 1770(a)(9). Defendant's acts and practices are also unlawful  
18 because they violate Bus. & Prof. Code §17500, *et seq.* Defendants unlawful and unfair practices  
19 include, without limitation, defendants', and each of their, unlawful negligence and violations of  
20 California Const. Art. I; Civil Code §§ 1798.81, 1798.81.5 prohibition against unreasonable  
21 penalties contained in Civil Code § 1671, and other laws of the State of California.

22 50. The breach of SONY's security was the direct and proximate result, on information  
23 and belief, of SONY's failure to implement and maintain security procedures and practices  
24 reasonably designed to protect the credit card account and other nonpublic information of  
25  
26  
27  
28



1 consumers, including, without limitation, Plaintiff and the Class herein. As stated above, said breach  
2 of security and unauthorized access to the private nonpublic information of Plaintiff and the Class  
3 herein was reasonably foreseeable.

4  
5 51. Defendant, through its business relationship with Plaintiff and the Class herein, and  
6 with each other, assumed the duty to keep the credit card account and other nonpublic information of  
7 Plaintiff and the Class that is in their possession private and secure. By their acts and omissions  
8 described herein, defendants, and each of them, unlawfully breached this duty.

9  
10 52. Defendant was in a special and a fiduciary relationship with the Plaintiff and the  
11 Class by reason of their entrustment with credit card account and other nonpublic information. By  
12 reason said of special and fiduciary relationship, defendant had duty of care to use reasonable means  
13 to keep the credit card account and other nonpublic information of the Plaintiff and the Class that is  
14 on their possession private and secure, and inform Plaintiff and the Class members forthwith when  
15 any compromise of the security of such information occurred. Defendant has unlawfully breached  
16 these duties.

17  
18 53. Pursuant to the right to privacy insured by California Const., Art. I, Section 1,  
19 Defendants had duty to use reasonable care to prevent the unauthorized access, use or dissemination  
20 of the credit card account and other nonpublic information of the Plaintiff and the Class herein. On  
21 information and belief, Defendants unlawfully breached said duty.

22  
23 54. Pursuant to California Civil Code § 1798.81.5, defendant had duty to implement and  
24 maintain reasonable security procedures and practices to with respect to the credit card account and  
25 other nonpublic information of consumers, including, without limitation, the Plaintiff and the Class  
26 herein, in order to protect such information from unauthorized access, use or disclosure. On  
27 information and belief, defendants unlawfully breached said duty.

28  
55. On information and belief, the Plaintiff's and the Class's information that was

1 disclosed to unauthorized third parties, due to the breach of SONY's security was not encrypted.  
2 Pursuant to California Civil Code § 1798.82, defendant had, and continues to have, a duty to timely  
3 disclose the breach of security to Plaintiff and the Class whose personal information was, or is  
4 reasonably believed to have been, acquired by unauthorized persons. Defendant unlawfully breached  
5 this duty by, amongst other ways, delays and failure to properly disclose.  
6

7 56. Pursuant to the California Financial information Privacy Act, California Finance  
8 Code §§ 4050 *et seq.*, defendant breached unlawfully the requirements to prevent the unauthorized  
9 disclosures of nonpublic personal information of the Plaintiff and the Class to unaffiliated third  
10 parties. Fin. C. § 4052.5. defendant also unlawfully breached its duty to refrain from negligently  
11 disclosing nonpublic information pertaining to the Plaintiff and the Class to the third parties. Fin. C.  
12 § 4057.  
13

14 57. Pursuant to the California Constitutional Right to Privacy and California law there is  
15 an explicit public policy, creating and affirmative and continuing obligation on Defendants herein, to  
16 respect consumers' privacy and to provide reasonable consumer computer data security under the  
17 circumstances, including, without limitation, the Plaintiff and the Class herein, and to protect the  
18 security and confidentiality of their nonpublic personal information. Such duties include, without  
19 limitation, the duty to ensure security, protect against anticipated threats, and protect against  
20 unauthorized access. Defendants, on information and belief, breached said duties.  
21

22 58. Defendant's acts and practices are also unlawful because they violate the Song-  
23 Beverly Act, Civ. Code § 1790, *et seq.*

24 59. Plaintiff, on behalf of himself, on behalf of the Class and on behalf of the common or  
25 general interest, seeks an order of this Court awarding restitution, disgorgement, injunctive relief and  
26 all other relief allowed under §17200, *et seq.*, plus interest, attorneys' fees and costs pursuant to, *inter*  
27 *alia*, C.C.P. §1021.5.  
28

1           60. Plaintiff and the Class have been harmed by these actions and bring this suit to  
2 remedy these violations..

3           **B. Count II -- Violation of Bus. & Prof. Code § 17500**

4           61. Plaintiff realleges and incorporates the above allegations by reference as if set forth  
5 fully herein.

6           62. Plaintiff brings this cause of action on behalf of himself, on behalf of the Class and on  
7 behalf of the common or general interest. Plaintiff has suffered injury in fact and has lost money or  
8 property as a result of Defendants violation of Bus. & Prof. Code § 17500, *et seq.*

9           63. Beginning in or before 2006, Defendant engaged in advertising and marketing to the  
10 public and offered the PlayStation consoles and PSN service for sale throughout the United States,  
11 including California, and the world.

12           64. Defendant has engaged in the advertising and marketing alleged herein with intent to  
13 directly or indirectly induce the purchase of the PlayStation consoles and PSN service.

14           65. Defendant's advertisements and marketing representations regarding the technical  
15 and other characteristics of the PlayStation consoles and PSN service are false, misleading and  
16 deceptive as set forth more fully above.

17           66. At the time Defendant made and disseminated the statements alleged herein, it knew  
18 or should have known that the statements were untrue or misleading, and acted in violations of Bus.  
19 & Prof. Code §17500, *et seq.*

20           67. Defendant actively concealed its knowledge that the PlayStation consoles and PSN  
21 service contained inherent defects.

22           68. Plaintiff has been harmed. Plaintiff, on behalf of himself, on behalf of the Class and  
23 on behalf of the common or general interest, seeks restitution, disgorgement, injunctive relief and all  
24 other relief allowable under §17500, *et seq.*

69. Plaintiff meets the standing requirements of C.C.P. 382 to bring this cause of action because, among other reasons, the question is one of a common or general interest, is a question of many persons and/or the parties are numerous and it is impracticable to bring them all before the Court.

**C. Count III -- Breach of the Song-Beverly**

70. Plaintiff realleges and incorporate the above allegations by reference as if set forth fully herein.

71. Plaintiff on behalf of himself and the Class for breach of implied warranty under the Song-Beverly Act, Civ. Code § 1790, *et seq.*

72. The PlayStation consoles are "consumer goods" within the meaning of Civ. Code §1791(a).

73. Defendant's implied warranty of merchantability arose out of and/or was related to the sales of the PlayStation consoles and PSN service.

74. As set forth more fully above, Defendant has failed to comply with its obligations under its implied warranty of merchantability.

75. Plaintiff and the Class have suffered and will continue to suffer damages as a result of Defendant's failure to comply with its warranty obligations. Accordingly, Plaintiff and the Class are entitled to recover such damages under the Song-Beverly Act, including damages pursuant to Civ. Code §§1791.1(d) and 1974.

76. Defendant's breaches of warranty, as set forth above, were willful. Accordingly, a civil penalty should be imposed upon Defendant in an amount not to exceed twice the amount of actual damages.

**D. Count IV -- Violation of Consumer Legal Remedies Act**

77. Plaintiff realleges and incorporates the above allegations by reference as if set forth



1 fully herein.

2 78. Plaintiff brings this claim individually and on behalf of the Class against Defendant.

3 79. Defendant has engaged in deceptive practices, unlawful methods of competition  
4 and/or unfair acts as defined by Civ. Code §1750, *et seq.* to the detriment of Plaintiff, members of  
5 general public and the Class. Plaintiff, the general public and members of the Class have suffered  
6 harm as proximate result of the violation of law and wrongful conduct of Defendant alleged herein.

7 80. Defendant intentionally, knowingly and unlawfully perpetrated harm upon Plaintiff  
8 by the above described facts. To wit, Defendant's actions in selling defective products and failing to  
9 remedy these defects have violated the following provisions of the CLRA:  
10

11 (a) Civil Code §1770(a)(5): Representing that goods or services have  
12 sponsorship, approval, characteristics, ingredients, uses, benefits or quantities which they do not  
13 have.  
14

15 (b) Civil Code §1770(a)(7): Representing that goods or services are of a particular  
16 standard, quality or grade, or that goods are of a particular style or model, if they are of another.

17 (c) Civil Code §1770(a)(9): Advertising goods or services with intent not to sell  
18 them as advertised.

19 (d) Civil Code §1770(a)(14): Representing that a transaction confers or involves  
20 rights, remedies or obligations which it does not have or involve, or which are prohibited.

21 (e) Civil Code §1770(a)(19): Inserting an unconscionable provision in the  
22 contract.  
23

24 81. The Defendant's policies and practices are unlawful, unethical, oppressive, fraudulent  
25 and malicious. The gravity of the harm to all consumers and to the general public from Defendant's  
26 policies and practices far outweighs any purported utility those policies and practices have.

27 82. Pursuant to Civ. Code §1780(a), Plaintiff seeks an order enjoining Defendant from  
28

engaging in the methods, acts or practices alleged herein.

83. Pursuant to Civ. Code §1781, if Defendant do not rectify it illegal acts within 30 days, Plaintiff intend to amend this Complaint to add claims for:

- a) actual damages;
- b) restitution of money to Plaintiff, the general public and Class members;
- c) punitive damages;
- d) attorneys' fees and costs; and
- e) other relief this Court deems proper.

**E. Count V -- Breach of Express Contract**

84. Plaintiff realleges and incorporates the above allegations as if set forth fully herein.

85. Defendant agreed to, among other things, properly maintain Plaintiffs and Class members' data and provide uninterrupted PSN service. In exchange, Class members agreed to purchase PlayStation consoles and PSN service.

86. Valid consideration existed, as Plaintiff and Class members paid money in exchange for Defendant's agreement to, among other things, maintain Plaintiff's and the Class members' data and provide uninterrupted service.

87. The parties' agreement is contained in customer contracts and related documents.

88. Defendant breached its contracts because Defendant did not properly maintain Plaintiff's and Class members' electronic information or provide uninterrupted service.

89. Class members suffered and will continue to suffer damages including, but not limited to, loss of their electronic information and an interruption in service.

**F. Count VI - Breach of Implied Contract**

90. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully herein.

1           91. Defendant agreed to, among other things, properly maintain Plaintiffs' and Class  
2 members' data and provide uninterrupted PSN service. In exchange, Plaintiff and the Class  
3 members' agreed to purchase PlayStation consoles and PSN service.

4           92. Defendant entered into implied contracts with Plaintiff and the Class members.  
5 Implied contracts arose from the course of conduct between the parties, as well as disclosures on  
6 Defendant's websites, in advertising materials, on product packaging, and/or on customer contracts.  
7 For example, Defendant disclosed on numerous occasions as alleged herein that users' data would  
8 not be disclosed to third parties. The disclosures created a reasonable expectation that users' data  
9 would be adequately maintained, and that the PSN functionally would be continuously available.  
10

11           93. Valid consideration existed, as Plaintiff and Class members paid money to Defendant  
12 in exchange for Defendant's agreement to, among other things, maintain users' data and provide  
13 uninterrupted PSN service.  
14

15           94. Defendant breached their implied contracts because they did not properly maintain  
16 Plaintiff and the Class members' electronic information or provide uninterrupted service.

17           95. Plaintiff and Class members suffered and will continue to suffer damages including,  
18 but not limited to, loss of their personal, private financial information and an interruption in service.  
19

20           **G. Count VII -- Negligence**

21           96. Plaintiff realleges and incorporates the above allegations by reference as if set forth  
22 fully herein.

23           97. Plaintiff brings this cause of action on behalf of himself and the Class. Plaintiff have  
24 suffered injury in fact and lost money or property as a result of such negligence.

25           98. Defendant owed a duty of care to Plaintiff, individually and to the Class he  
26 represents.

27           99. Defendant owed a duty to Plaintiff and the Class to use reasonable care in  
28

1 maintaining the PlayStation and PSN service in a manner that protected the data Plaintiff and the  
2 Class uploaded to the PSN service;

3 100. Defendant breached their duty to Plaintiff and the Class by failing to ensure the  
4 integrity of their data;

5 101. Had the Defendant exercised reasonable care and skill protecting the data of Plaintiff  
6 and class members, data would not have been lost.

7 102. Plaintiff and the Class have suffered damages, including, but not limited to, economic  
8 damages, according to proof at trial.

9  
10 **VIII.**

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff, on behalf of himself, all others similarly situated and pray for  
13 judgment against Defendant as follows:

- 14
- 15 1) An order certifying this case as a class action and appointing Plaintiff and his counsel to  
16 represent the Class.
  - 17 2) Restitution and disgorgement of all amounts obtained by Defendant as a result of its  
18 misconduct, together with interest thereon from the date of payment, to the victims of  
19 such violations.
  - 20 3) Actual damages for injuries suffered by Plaintiff and the Class.
  - 21 4) Compensatory money damages according to proof.
  - 22 5) Statutory damages according to proof.
  - 23 6) An order requiring Defendant to immediately ceases its wrongful conduct as set forth  
24 above; enjoining Defendant from continuing to falsely market and advertise, conceal  
25 material information and conduct business via the unlawful and unfair business acts and  
26 practices complained of herein; ordering Defendant to engage in corrective notice  
27  
28



1 campaign; and requiring Defendant to refund to Plaintiff and all members of the Class the  
2 funds paid to Defendant for the defective PlayStations and PSN services; ordering  
3 Defendant to pay for credit card monitoring for Plaintiff and all members of the Class.

4  
5 7) Attorneys' fees and costs.

6 8) For statutory prejudgment interest.

7 9) For such other relief as this Court may deem just and proper.

8 **IX.**

9 **JURY DEMAND**

10 Plaintiff demands a trial by jury.

11  
12 Respectfully submitted,

13  
14 **GNAU & TAMEZ LAW GROUP,LLP**

15 /s/ Daniel R. Tamez

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25  
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*(pro hac vice application to be filed)*

**ATTORNEYS FOR PLAINTIFFS**